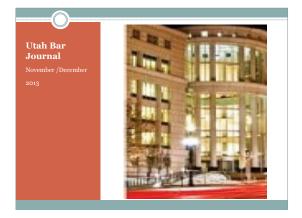
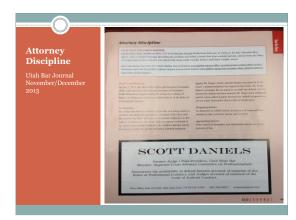
Ethical Issues That Arise During Trial





What shall it profit a prosecutor if s/he shall gain a wrongful conviction and lose his license and/or his reputation?

What conduct will cause you to lose your bar license?

You're a lousy lawyer?

You can't make any money?

You lose lots of cases?

Former Texas Prosecutor Sentenced to Jail

• The only thing for which you will have your bar license taken away is unethical behavior.

The man who was the face of the law for 30 years is charged over a wrongful murder conviction.

The Associated Press, GEORGETOWN, Teass

A former Texas prosecutor charged over a wrongful murder conviction over a wrongful murder conviction over a by the day of the conviction of the agreed to a 10-day jail sentence Friday, accepting the punishment in front of the innocent man he helped put in prison for nearly 25 years.

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What do Jerry Springer, Dane Nolan	
and	
Angela Micklos have in common?	
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Victim of a sexual assault case told a different story to the producers of the Jerry Springer	
Show at their behest than what she had told the police. But she explained it by saying she	
had been coerced into changing her story.	
What do you do?	
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What would you advise and why?	
Don't want to convict the wrong guy.	
You always want to do it correctly.	
It's going to come out sooner or later.	
Own it!	

We all really do want justice. And that means fairness to all including the defendant.	
But, we and the defense play by different rules.	
□ We are competitive people and we want to win. We are expected to dot every i and cross every t. □ But the defense is NOT. □ We never hear of defense counsel's misconduct, but we always hear of prosecutorial misconduct. □ We only hear about problems with defense counsel when they didn't do a good enough job to win-i.e. ineffective assistance counsel.	

Utah Appellate Blog		
State v. Campos – Prosecutorial Misconduct and		
"Cumulative" Ineffective Assistance • Re Beth F. Kennels on Settember oth correlator on Blab Law Utah Court of Assests Onition: The		
Utah Court of Appeals recently issued State to Compos, 2013 UT App. 213, which reversed Reginald Campos s conviction for attempted nurder. Mr. Campos achieved this result by successfully showing that his trial coursed was constitutionally ineffective. Nothely, the court's opinion did not rely upon any single error made by counsed, but instead on the 'cumulative effect' of those errors. This opinion also holds that it is prosecutorial misconduct for a prosecutor to tell the jury in closing argument that defense counsels theory of the case is a 'Ted herring', Mr. 155, 57.		
I. The Facts Mr. Serbeck believed that the car he saw driving through his neighborhood was associated with some recent crimes in the neighborhood, so he and his neighbor followed the car in Mr. Serbeck's SUV. Mr. 13. The driver of the car was actually Mr. (Campos sixteen—ave-old daughter, 4. 15. When he sop to home, she reported to her father that she had		
actionary art, changes a succeive parameter and anginer, are 3-5, winst use got notice, size reported to ner numer that size had been followed, Al. 5\(\frac{1}{2}\)-7. When Campos and his disuplier then left to find the SUV that had followed her. Al. 7\(\frac{1}{2}\)-7. When they found if, Mr. Campos U-turned abruptly in front of Mr. Serbeck's SUV, forcing him to stop quickly, Id. Mr. Campos and Mr. Serbeck disagree on the details of what happened next, but ultimately, Mr. Campos sob Mr. Serbeck, paralyzing him from the chest down. Id. 95-12. The jury convicted Mr. Campos of attempted murder with injury for shooting Mr. Serbeck, and againvalued assault for holding Mr. Serbeck is neighbor at gunopoin. Id. 5\(\frac{1}{2}\)-7.		
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Why is that? Because on appeal, we(the State) are always playing defense. It's the losers who		
get to appeal and that's not us. [sic] So, we don't get to complain about something the defense		
attorney did wrong.		
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D 1		
Rule 14-301 Preamble		
9. Lawyers shall not hold out 13. Lawyers shall not knowingly file or serve moti		

•Examples of problem situations.	
You're in the restroom washing your hands when one of the jurors comes in and starts talking to you.	
After a conviction, you become aware one of the jurors went to the scene of the	
crime during the trial. Or, did some research on an issue in the case.	
You know one of the jurors and you're certain they probably can't be fair, despite what they have told the judge.	
Two of your witnesses violate the exclusionary rule.	
Generally, you're the only one that knows about it. What do	
you do when these things occur?	
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How do you prevent this type of thing from	
happening?	
An adage: An ounce of prevention is worth a pound of cure.	
Tell them what will happen right up front in your opening statement.	
A genius gets it the fifth time.	
THE TEN COMMANDMENTS* OF	
ETHICAL BEHAVIOUR	-
ж.	
\star Actually there are thirteen	

1. Thou shalt not exercise improper peremptory challenges. Rule 8.4 Misconduct. (d) Engage in conduct that is prejudicial to the administration of justice. Batson/Cantu challenges.	
2. Thou shalt not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4 (c). Judge Ken Anderson Michael Morton	
3. Thou shalt not back out of a plea offer that you made, but can't honorunless.	

4. You believe a confession is questionable at best, and illegal, at worst. But a seasoned, competent defense attorney hasn't challenged it. Do you use it? Why? Prosecutorial misconduct Ineffective assistance of counsel Plain error.	
5. As the trial has progressed, your case has gotten weaker and weaker. Do you pull the plug or let the case proceed? Does the answer change if you are now convinced there isn't sufficient evidence to merit a reasonable likelihood of success at trial?	
6. You are convinced right up front that there isn't probable cause or a reasonable likelihood of any conviction in the case. But your supervisor, or D.A. or C.A. disagrees and wants you to try the case. What do you do? Rule 5.3 & 3.8. (Reasonable likelihood of success)	

7. You have a weak, but winnable case. Are you required to inform the defense counsel of the weaknesses of your case?	
weathlesses of your case.	
8.Are you required to provide the defense with all of the evidence you have?	
Holding some back for rebuttal?	
Brady does not warrant the Court of Appeals' holding. It does not follow from the	
prohibition against concealing evidence favorable to the accused that the prosecution must reveal before trial the names of all witnesses who will testify unfavorably. **846	
There is no general constitutional right to discovery in a criminal case, and Brady did not create one; as the Court wrote recently, "the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded" Wardius v.	
Oregon, 412 U.S. 470, 474, 93 S.Ct. 2208, 2212, 37 L.Ed.2d 82 (1973). Brady is not implicated here where the only claim is that the State should *560 have revealed that a government informer would present the eyewitness testimony of a particular agent	
against the defendant at trial. [8] In terms of the defendant's right to a fair trial, the situation is not changed materially by the ad- 97 S.Ct. 837 Page 10 429 U.S. 545, 97	
S.Ct. 837, 51 L.Ed.2d 30	

(T)he State has two independent obligations to provide evidence to the defense. First, the State has a duty under the Due Process Clause of the	
United States Constitution to provide, without request by the defendant, all exculpatory evidence. Second, when required by court order, the State must disclose evidence pursuant to Rule 16 of the	
Utah Rules of Criminal Procedure.	
State v. Rugebregt, 965 P.2d 518, 522 (Utah Ct.App.1998) (internal quotation marks omitted)	
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9. A witness tells you a better story in the	
hall just before you put him on than what is in the police report. Do you use it?	
A police report is for the purpose of	
refreshing recollection; it's not a transcription of all of the details.	
transcription of an or the detailer	
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10 Your victim in a domestic violence case tells you beforehand	
that she is going to say something different on the stand than what she had told the police the night of the crime. Do you put her on the stand solely for the purpose of impeaching her?	
State v. Treseder 244 P. 654, 655 (1926) Can't call a witness solely for the purpose of impeaching her. Rule 607 URE Can	
impeach our own witness. Rule 801(d)(1)(A) Prior statement is not used just for the purpose of impeaching, but comes in as substantive evidence. Impeaching the witness is foundation for	
getting in the original statement.	

CONCLUSION	
The answer to the question is	
NOTHING	